

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

JEFF TEPFER,	)	
Claimant,	)	<b>IC 04-504242</b>
v.	)	
	)	
MORTENSEN ENTERPRISES, INC.,	)	<b>ORDER DENYING</b>
	)	<b>RECONSIDERATION</b>
Employer,	)	
and	)	
	)	Filed Nov. 22, 2005
STATE INSURANCE FUND,	)	
	)	
Surety,	)	
Defendants.	)	
_____	)	

On October 20, 2005, Claimant filed a motion to reconsider a previously denied reconsideration. Defendants did not respond to Claimant's motion. On August 17, 2005, Claimant filed a Motion to Reconsider the Commission's order issued on July 26, 2005. In that order, the Commission ruled that Claimant had failed to prove he suffered an accident in the course and scope of his employment. As a result, his complaint was dismissed.

It is important to note there is no procedure for a "reconsideration of a reconsideration." Nevertheless, given Claimant's *pro se* status, the Commission will entertain this motion in an effort to clarify the situation.

Idaho law provides that a party has twenty (20) days from the date a decision of the Commission has been filed within which to move for reconsideration. Idaho Code, § 72-718. If no motion to reconsider has been made within 20 days, the decision shall be final and conclusive and

may then be appealed to the Supreme Court. The original pleading by Claimant shows a Certificate of Service on August 14, 2005. Therefore, the motion was “made” on that date. Due to Claimant’s *pro se* status and the Commission’s desire to pursue fairness, the Commission will address the merits of Claimant’s original reconsideration filed on August 17, 2005.

In his original motion for reconsideration Claimant asserts error in the finding that he feared retaliation for reporting an injury. He maintains, instead, he did not initially report his injury to save Employer money. Claimant apparently took the Commission’s language from the “Contentions” portion of the Commission’s decision. This language is not a finding of fact, but merely a recitation of the claims of the parties. The Commission did not make a factual finding on this particular point.

The record shows Claimant did not initially report his alleged injury to Employer. Claimant’s reasons for not initially reporting his alleged injury are irrelevant. The crux of the case was Claimant’s failure to provide appropriate medical evidence to support his claim that he sustained an accident and injury while working for Employer. Also, the Form 1 dated February 20, 2004, eight days after the alleged accident occurred, conflicts with Claimant’s version of events surrounding the alleged injury. As far as the Commission can tell, any reporting of the alleged injury was confusing and inconsistent as to when the injury may have occurred and how it may have occurred.

Claimant goes on to express his concern that four individuals involved have lied about the factual circumstances of this case, causing harm to Claimant’s case. Claimant offers no evidence to support this concern other than his personal opinion. Claimant’s personal statements regarding these four individuals are not enough to cause the Commission to reconsider the decision of July 26.

Claimant further argues that Defendants have failed to provide “proof or defense” of the

proposition that Claimant “had missed work due to non-related back problems.” Once again, Claimant’s concern is over a statement made under the “Contentions of the Parties” in the July 26 decision. Statements made under this section of the decision are not findings of the Commission but are assertions or arguments made by the parties. It is clear, however, that the actual wording of the “Contentions” is not contained in any final conclusion reached by the Commission.

Finally, Claimant argues Defendants failed to comply with Rule 10, JRP, regarding the disclosure of proposed exhibits prior to hearing. Technically, Claimant is correct on this point. However, Claimant had an opportunity to object to the admission of Defendants’ exhibits at hearing but chose to make no such objection. Furthermore, Defendants’ exhibits are actually somewhat duplicative of Claimant’s exhibits as they are merely the complete medical records from Primary Health, part of which were offered as exhibits by Claimant. Therefore, the admission of these exhibits was harmless and may, in fact, have helped Claimant more than he realizes.

Based upon the foregoing reasons, Claimant’s original motion to reconsider and his pending motion for reconsideration are both DENIED.

DATED this \_22 day of November, 2005.

INDUSTRIAL COMMISSION

\_\_\_\_\_  
/s/ Thomas E. Limbaugh, Chairman

\_\_\_\_\_  
/s/ James F. Kile, Commissioner

\_\_\_\_\_  
/s/ R. D. Maynard, Commissioner

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on \_22 day of November, 2005, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

JEFF TEPFER  
10023 HIGHWAY 44  
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MAX M. SHEILS, JR.  
PO BOX 388  
BOISE ID 83701-0388

\_\_\_\_\_/s/\_\_\_\_\_